

DOCUMENT RESUME

03297 - [A2293424]

[Protest against Determination that Bid Was Nonresponsive].  
B-188865. August 16, 1977. 3 pp.

Decision re: Schobe Equipment Co.; by Robert F. Keller, Deputy  
Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: General Government: Other General Government  
(906).  
Organization Concerned: General Services Administration.

The protester objected to the rejection of its bid for the sale of surplus personal property as nonresponsive for failure to submit the proper bid bond. The agency's rejection of the bid accompanied by an annual rather than an individual bid bond was not arbitrary because the solicitation permitted the annual bid bond "when provided for in the Invitation" and the invitation did not so provide. The agency should review its policy under which use of the annual bid bond is not permitted for sales of surplus personal property. (Author/SC)

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-188865

DATE: August 16, 1977

MATTER OF: Schobe Equipment Company

**DIGEST:**

1. Agency's rejection of bid accompanied by annual rather than individual bid bond was not arbitrary because solicitation permitted annual bid bond "when provided for in the Invitation" and invitation did not so provide.
2. GAO recommends that agency review its policy under which use of annual bid bond is not permitted for sales of surplus personal property.

Schobe Equipment Company (Schobe) protests the rejection of its bid by the General Services Administration (GSA) as nonresponsive for failure to submit the proper bid bond. Invitation for bids (IFB) 5 FWS-77-44 was issued in January 1977, for the sale of surplus personal property under the control of GSA. This property was located at the Cleveland Army Tank Automotive Plant, Cleveland, Ohio.

The solicitation required a bid deposit and provided that "bid deposits shall be in U.S. currency or any form of credit instrument \* \* \* payable on demand in U.S. currency." The solicitation allowed the use of an annual bid bond Standard Form 151 (SF 151) "when provided for in the Invitation" and provided that bid deposits

"shall be in U.S. currency or any form of credit instrument \* \* \* Deposit Bond - Individual Invitation Sale of Government Personal Property (Standard Form 150) \* \* \* is an acceptable form of bid deposit."

While the IFB also provided that an individual deposit bond was acceptable, it did not specifically provide for use of an annual bid bond as an acceptable form of bid deposit.

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Schobe was high bidder for one piece of equipment, and its bid referred to an existing Deposit Bond-Annual (SF-151) as the bid deposit intended to be used. GSA notified Schobe that the IFB did not provide for an annual bid bond and therefore rejected its bid as non-responsive.

It is GSA's position that an annual bid bond is allowed by the solicitation only "when provided for in the Invitation." Since the invitation did not specifically allow an annual bid bond, GSA contends that this amounts to a specific prohibition against its use; consequently GSA rejected all bids (6) utilizing an annual bid bond. GSA also asserts that the protester's annual bond covered only sales of DoD surplus property and that the property offered for sale was not DoD surplus property but Government surplus personal property under the control of GSA. GSA contends that the surety could thereby disavow liability for this sale under the particular bond in question.


We have been informed by GSA that the item in question has been removed and delivered to the next high bidder. Under the terms of the IFB, title to the property vested in the purchaser upon removal. Under these circumstances, it would serve no useful purpose to decide whether the protester's annual bid bond would have been enforceable against the surety for purposes of the instant sale. Rather we have directed our review to the question of whether GSA arbitrarily rejected the bid which would entitle the protester to compensation for bid preparation costs.

In this regard, we note that GSA rejected Schobe's bid as nonresponsive because the IFB stated that an annual bid bond was acceptable "when provided for in the Invitation." However, the invitation did not so provide and GSA rejected Schobe's bid which referenced the annual bond. We are of the opinion that GSA's action in this regard is consistent with the provisions of the solicitation and is not arbitrary.

We have noted that GSA rejected six bids in this procurement because annual bid bonds were referenced in lieu

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of the submission of individual bonds or other acceptable forms of security. It is GSA's policy not to accept annual bid bonds but we are advised that GSA is reevaluating this policy. We agree that GSA should review whether this policy continues to be advantageous to the Government.

  
Deputy Comptroller General  
of the United States